IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10002 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH SHIVRAM CHAUDHARI (MARATHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR AJ DESAI, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/02/2000

ORAL JUDGEMENT

Heard learned advocate Ms. D. R. Kachhavah for the petitioner and learned A.G. P. Mr. A. J. Desai for the respondents Nos. 1, 2 and 3.

1. The detention order dated 30.3.1999 passed by the respondent No. 1, Commissioner of Police, Ahmedabad, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", copy of which is produced at Annexure - "B" interalia indicate that four prohibition cases are registered against the petitioner at Nasabandhi (East) Police Station on 29.8.1997, 29.12.1997, 15.3.1999 and 23.3.1999 respectively. That the country made liquor has been seized in each cases. That the first two cases are pending for trial in the Court, while rest of who cases are pending for further investigation.

The grounds of detention further enumerate that two witnesses, on assurance of their anonymity, have given statements dated 28.3.1999, wherein, the alleged incidents dated 10.3.1999 and 20.3.1999 are narrated.

3. That on the basis of above stated material, the respondent No. 1 as Detaining Authority has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the impugned order suffers from vice of non application of mind in as much as the detention order has been passed and served on the date, when the petitioner was in judicial custody in respect to CR. No. 293/99 as he was arrested on 27.3.1999. Furthermore, the Detaining Authority has failed to enumerate any material in the grounds of detention to form a subjective satisfaction that after getting release on bail, the detenu is likely to continue his prejudicial activities and thereby, though, the detenu is in judicial custody, it is necessary that he should be detained under "PASA".

5. On scrutiny of grounds of detention, it appears that the Detaining Authority has mentioned in last but one paragraph that petitioner is released on bail in first three cases, while, he is in judicial custody in fourth case. However, there is a possibility that petitioner is likely to apply for bail and after getting release on bail, he would continue his anti-social activities. That so far as registered cases are concerned, no criminal case either under Prohibition Act or under I.P.C. has been registered in the year 1998.

That prior to passing of detention order, no alleged anti-social activities of the petitioner have been enumerated in the grounds of detention proximate in time, so as to come to reasonable conclusion that if not detained, the detenu would continue his anti-social activities if released on bail. Furthermore, the Detaining Authority has not considered the aspect of claim of cancellation of bail, though, available under Section 437(5) of Cr. P.C. prior to passing of impugned order.

6. It is noteworthy that in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT reported in 1995(2) G.L.R. , 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr. P.C. to claim cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No. 1058 of 1999 decided on 15.9.1999 by this Court (Coram : C. K. Thakkar & A. L. Dave, JJ.)

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 30.3.1999 passed by the respondent No. 1 against the petitioner is hereby quashed and set aside. The petitioner Prakash Shivram Chaudhari (Marathi) is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

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Date : 21.02.2000. (A. K. Trivedi, J.)

PALLAV.